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December 14, 2005

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Via email: comments@FDIC.gov

Re: Notice of Proposed Rulemaking concerning Interstate Banking and Federal Interest Rate Authority; 12 CFR Parts 331 and 362.

Dear Mr. Feldman:

This letter is to comment on the FDIC's Notice of Proposed Rulemaking ("NPR") as published in the Federal Register on October 14, 2005.

The Florida Office of Financial Regulation ("OFR") appreciates the efforts of the FDIC to address the concerns of the state-chartered banking industry regarding interstate bank and branch activities. Those concerns have been primarily caused by the Office of the Comptroller of the Currency ("OCC") with its recent overreaching policies, actions, and rules that claim to preempt much of the states' traditional regulatory authority and laws. The OCC has unilaterally and drastically shifted the traditional competitive dual-banking system balance in favor of national banks, all without the specific authority of Congress. The challenge is now for the state-chartered financial institutions to seek avenues to regain competitive parity, such as through the petition to the FDIC that prompted this proposed rulemaking.

First, I'd like to note that state-chartered community banking is very much alive and well in Florida. During the last five years, more new banks have been chartered in Florida than any other state, and the overwhelming majority of those banks have been state-chartered institutions. We continue to receive an ever-increasing number of applications to organize new state-chartered banks, indicative of the strong need for community bank services. However, we recognize that ultimately, as the community banks grow, they must be competitive with the national banks and the out-of-state banks that do business in Florida. This is increasingly difficult as state laws and regulatory authority in the areas of community reinvestment, consumer protection, and fair lending are preempted for the benefit of their competitors, and without any perceptible benefit to the public.

As a state regulator, we must choose between two options to advocate the best public policy for the industry and the public. The easy option is to capitulate to the preemption efforts and defer solely to the OCC to decide the minimal standards of consumer protection and industry regulation. That is essentially the option advocated by the Financial Services Roundtable rulemaking petition to the FDIC. The other option is more difficult, to seek competitive equality with a safe and sound dual-banking system, as envisioned by Congress and most state legislatures, which best benefits and protects the public. The OFR supports the latter option as the best public policy. Many of our fundamental concerns were expressed in our original May 24, 2005 comment letter concerning the Roundtable's petition and those concerns continue today.

The OFR does not object to the NPR to the extent that the proposed rules merely clarify the application of Sections 24(j) and 27 of the Federal Deposit Insurance Act ("FDI Act") for state-chartered banks and provide for a process to achieve consistency and certainty in their application. However, we do not agree that deference to the OCC on preemption issues is warranted, nor do we agree that any extension by rule of Sections 24(j) and 27 to non-banks (i.e., operating subsidiaries, affiliates, or agents of banks) is appropriate or permissible under existing law.

The plain language of Section 24(j) only addresses the application of host state law and branch activities to banks and their branches. Nothing in Section 24(j) authorizes any preemption of home state law regarding any non-bank entities such as operating subsidiaries, affiliates, or agents of banks or branches. Thus the FDIC should not, either by rulemaking or deference to the OCC, attempt to extend the parity efforts of Riegle-Neal II to those operating subsidiaries, affiliates, and agents.

The NPR discussion of the legislative history of Riegle-Neal II as support for broad preemptive rules is misleading. While the obvious legislative intent was to provide state banks parity with national banks, that must be understood within the context of the OCC preemption policies in effect at that time. Even one Congressional Record statement quoted in the NPR noted: "Only in the limited circumstances in which the Comptroller preempts host state laws for national banks will out-of-State State-chartered banks similarly be exempted." Congress did not anticipate the OCC's subsequent wide-sweeping preemption assertions that have caused the current imbalance in the dual banking system.

Similarly, the plain language of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA"), as codified in Section 27 of the FDI Act, lends no support to allowing a "most favored lender" status or "interest rate exportation" to non-bank entities (operating subsidiaries, affiliates, and agents). Unless Congress decides to expressly extend such preemption, the FDIC and the OCC should not attempt to legislate through rulemaking or interpretive opinion letters.

The federal and state regulatory agencies throughout the country have already seen the determined efforts of those unscrupulous predatory lenders who would seek shelter from consumer protection laws under the guise of traditional banking law and regulations. The most infamous may be the "payday" lenders who have operated in the "rent-a-charter" mode with cooperating financial institutions. Despite the federal agencies' regulatory guidelines to discourage such activity, it continues to be a problem for consumers and state regulators.

One recent example in Florida involves a payday lender that has contractual agreements with an out-of-state state-chartered bank. The borrower had no longer qualified for a new payday loan since he had outstanding payday loans. The bank then made an "alternative financial product" loan, purportedly in compliance with the FDIC's Revised Payday Lending Guidelines. The loan amount was for $250, to be paid back in bi-weekly installments over eight months, with a stated finance charge of $514 and an annual interest rate of 250%. This should be considered "loan sharking" by any reasonable person and should not be permitted under any law or rule allowing the exportation of interest rates. We are currently investigating available legal avenues to curtail such flagrant and abusive lending practices. There is no benefit to consumers, or to reputable depository institutions, to extend the shields of interstate lending to operating subsidiaries that are even further removed from regulatory oversight.

Finally, in this era of rapid technological changes in providing financial services, consumer confusion is certain as to what state and federal law applies, and where to seek resolution of complaints and questions. Full and fair disclosure to borrowers of all key loan terms, including identification of governing law and regulators, is essential and fundamental in any transaction. The FDIC should insist that all interstate banking activities include such appropriate disclosure to consumers.

We applaud the FDIC for providing a forum for the open and frank discussion of the complex issues involved in interstate banking and the difficult balancing requirements necessary to maintain a competitive safe and sound dual-banking system. It is in the best interests of the American public and the national economy that the regulatory agencies and the banking industry are able to achieve those goals. We thank the FDIC for its efforts and the opportunity to comment on the proposed rules.

Sincerely,

Don B Saxon

Don Saxon

DS/lc

cc: Conference of State Bank Supervisors
Florida Bankers Association